

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.1800 of 2011 (O&M)
Date of Decision: March 04, 2016.**

Ram Rattan and another

.....APPELLANT(s).

VERSUS

Balwanta (deceased) through his LRs and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vivek Suri, Advocate
for the appellant (s).

Mr. J.S. Khattar, Advocate for
Mr. Deepak Sharma, Advocate
for caveator-respondent No.1.

SURINDER GUPTA, J.

Heard.

2. The plaintiff-respondent Balwanta (since deceased, now represented by his legal representatives) filed suit seeking possession of land bearing khasra No.104 min(2-6), Khewat/Khatauni No. 89min/167min situated in village Samlehri, Tehsil and District Panchkula on the basis of his title as per the sale deed dated 15.06.1987 executed in his favour by Kanwar Nagender Singh, previous owner of the suit land.

3. The defendants on the basis of their possession from the time immemorial contested the claim of the plaintiff and also the right of Kanwar Nagender Singh to sell the suit land.

4. The parties have earlier also indulged in litigation and as per the copy of the judgment (Ex.P2) on record, the respondents were held to be owner of the suit land, which was in possession of appellants-defendants. With this finding, the earlier suit filed by the respondent-plaintiff seeking the relief of permanent injunction was dismissed. None of the party to the earlier suit preferred any appeal against the judgment and decree passed therein. Thereafter, the plaintiff filed the instant suit seeking possession of the suit land and learned Civil Judge (Junior Division), Panchkula dismissed the suit with the observation that it is barred by principle of res judicata in view of the earlier litigation.

5. In appeal, the finding recorded by learned Civil Judge (Junior Division), Panchkula was set aside by the first Appellate Court with observations that vide judgment and decree dated 30.09.2001 passed by learned Additional Civil Judge (Senior Division), Panchkula in the earlier suit, the plaintiff was given right to seek possession of the suit land by adopting due process of law. Filing of suit seeking relief of possession was due process of law, which the plaintiff has adopted, as such, finding recorded by learned Civil Judge (Junior Division), Panchkula that the suit of the plaintiff is barred by principle of res judicata, was rightly set aside by the first Appellate Court. It was also observed that the defendants have taken a plea that they have become owner of the suit land by way of adverse possession but the required ingredients were neither pleaded nor proved before the Court below.

6. Learned counsel for the appellants-defendants has argued that the appellants-defendants are in possession of the suit land from the time

immemorial, as such, cannot be dispossessed.

7. The possession of the appellants over the suit land has not matured into title and the plaintiff (now through his LRs) who is owner of the suit land as per the sale deed dated 15.06.1997, is entitled to seek the possession. The appellants could resist the plea of plaintiff only if their possession had matured into title or they have attained better title than the plaintiff over the suit land.

8. Keeping in view the above fact, I find no legal or factual infirmity in the judgment of first Appellate Court, calling for any interference.

9. No substantial question of law requiring determination arises in this appeal, which has no merits.

10. Dismissed.

March 04, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE